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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3282 of 1998
WITH
CIVIL APPLICATION No 7605 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
1 Yes, 2 Yes except [ ] portion, 3-5 No

UNJHA AGRICULTURAL PRODUCE MARKET COMMITTEE
Versus
STATE OF GUJARAT
Appearance:
MR KS JHAVERI for Petitioners
MR JM THAKORE, Advocate General with MR PG DESAI, G.P. for Respondent No. 1
MR PK JANI for Respondent No. 2
MR MD PANDYA for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH
Date of decision: 5/11/1998

JUDGEMENT

1. In the main matter the petitioners have come out with following prayer :-

"... to issue a writ of mandamus or writ of prohibition or any other appropriate writ or

direction or order quashing and setting aside the Notification dated 20th April, 1998, at Annexure-D to the petition and the order dated 21st April, 1998, at Annexure-E to the petition and be pleased to direct the respondents to restore the position prevailing on 19th April, 1998 prior to passing of the order dated 20th April, 1998."

[Annexure-D to the petition is the notification of the State Government issued u/S. 52 and 5 of the Gujarat Agricultural Produce Markets Act, 1963 (for short 'the Markets Act') replacing the members of the Unjha Agricultural Produce Market Committee with the named members nominated by the Government u/S. 54 of the Markets Act.

The order dated 21/4/1998 Annexure-E is passed by the Director under the Markets Act appointing Deputy Director [Agricultural Marketing] and District Registrar, Cooperative Societies, Mehsana as the authority to administer the affairs vice the Chairman/Vice Chairman to be appointed u/S. 31 of the Markets Act.

2. It appears that by notification dated 31/1/1997 (Annexure-A) referring to the earlier notification dated 30/10/1995 and 28/12/1995 issued u/S. 52 read with sec. 5 of the Markets Act, declaring its intention to divide the market area of the Agricultural Produce Market Committee [APMC] Unjha, comprising of Unjha and Unava of Meshana District into two separate market areas, namely Unjha and Unava and particularising the villages/towns for the said two areas, declared that the market area of the APMC under Unjha and Unava of Mehsana District shall be divided into two market areas as aforesaid for regulating the purchase and sale of the commodities described in the notification from the date of the publication of the notification in the Government Gazette. By second such notification dated 31/1/1997 also placed at Annexure-A the Government of Gujarat exercised power u/S. 54 of the Markets Act for nominating the members of the two committees, namely Agricultural Produce Market Committee, Unjha, District Mehsana and Agricultural Produce Market Committee, Unava, District Mehsana.

3. The petitioners have also placed on record notification dated 18/9/1997 Annexure-B indicating allocation of funds and properties of the erstwhile Unjha Agricultural Produce Market Committee to the bifurcated

market committees, namely Unjha Agricultural Produce Market Committee and Unava Agricultural Produce Market Committee in the ratio of 80:20.

The petitioners have subjected to challenge the aforesaid orders on the ground that powers u/S. 54 of the Markets Act came to be exhausted and could not be exercised once again when the nominated members were already working, that the State Government failed to appreciate while nominating new members of the Unjha Agricultural Produce Market Committee that the provision of sec. 54 (2) of the Markets Act prescribes for nominating as far as possible the members of the dissolved market committee, that the appointment of the earlier body was for a period of 2 years and the same could not be recalled and hence, the impugned order would be illegal and would amount to colourable exercise of power by the State Government and that the orders impugned in this petition are otherwise arbitrary and would amount to arbitrary exercise of powers.

4. When this matter was placed for admission this Court (Coram : M.S. Shah, J.) admitted the same but did not grant interim relief and expedited the final hearing of this petition. Following contentions of the parties were recorded :-

"Firstly, the petitioners having been appointed under the order dated 31/1/1997 under the provisions of sub-section (2) of section 54 of the Act upon bifurcation of the old APMC, Unjha, cannot be removed before completion of the period of two years stipulated in the impugned order dated 31/1/1997.

Secondly, the members of the Committee to be appointed under sub-section (2) of section 54 must be, as far as practicable, persons who were members of dissolved market committee, but the impugned order dated 20/4/1998 does not include any member of the dissolved market committee and, therefore, also the impugned order is illegal and is required to be stayed.

Thirdly, it is submitted that the reliance placed by the respondents on the order dated 6/3/1998 passed by the Division Bench of this Court in Special Civil Application No. 8953 of 1997 is misconceived because in para. 6 of that order, the Division Bench had observed that it was a fit

case where action was to be taken under the Act with special reference to the provisions contained in Section 46 of the Act. If the Government had taken any action under Section 46 of the Act, the petitioner committee and its members as appointed under the order dated 31/1/1997 would have got an opportunity of being heard, but by not taking action under the said provisions, the Government has deprived the petitioners of their right to be heard before the drastic and adverse action taken against the petitioners and the other members of the old committee.

4. On the other hand, Mr. P.G. Desai, learned Government Pleader has relied on the decision of this Court in Special Civil Application No. 1708 of 1998 and has contended that in view of the fact that the appointment of members by order dated 31/1/1997 was made as nominees of the Government, pleasure doctrine would apply and the Government has a right to replace the said members by other members.

Secondly, it is submitted that there is nothing in the provisions of sub-section (2) of Section 54 which would suggest that the power under the provisions of sub-section (2) of Section 54 can be exercised only once and that the committee appointed once cannot be reconstituted.

Thirdly, it is submitted that in view of the facts pointed out in the decision of the Division Bench in Special Civil Application No. 8953 of 1997, the Government was justified in passing the impugned order."

At that stage the Court refrained from entering into the larger question of applicability of pleasure doctrine.

5. The petitioners moved aforesaid civil application with following interim reliefs :-

"Pending final disposal of this petition, the Hon'ble Court be pleased to restrain the new management from taking any policy decision and divert the funds of the market committee contrary to provisions of the Act and be pleased to

further restrain them from disturbing the position of the licence holder prevailing during the year 1997-98 and to issue appropriate directions to the members of the opponent no. 4 Market Committee to reimburse the Unjha Agricultural Produce Market Committee the funds wrongly diverted as stated in this application and lastly to take up the main matter for final hearing."

The allegations in the aforesaid civil application are that the new management is transferring huge fund of the market committee to the State Government for certain oblique purpose, that the new management has diverted more than Rs. 1,61,00,000/- to the State Government under the scheme of Gokul Village and such diversion of funds would be contrary to the provisions of law in as much as the market funds could be diverted for the purposes referred to in sections 32 and 33 of the Markets Act and that too in the market area comprising the market committee. Reference has been made to order dated 8/5/1998 passed by this Court in S.C.A. No. 3367 of 1998, when similar order came to be passed by the Government in case of Unava Market Committee and this Court (D.C. Srivastav, J.) stayed the order dated 21-22/4/1998 of the State Government and the old management has been managing the affairs of the market committee. Against the said order the State Government preferred L.P.A. No. 680 of 1998 which has been admitted and interim relief has been refused, whereas the L.P.A. No. 678 of 1998 filed by the affected party came to be withdrawn. It has further been asserted that the nominated member of the Unjha A.P.M.C. has also preferred S.C.A. No. 3994 of 1998 wherein, while admitting the matter, this Court restored the nominated member as the member of the respondent - market committee. It has then been asserted that the respondent no. 4 - new market committee nominated by the State Government on 30/4/1998 has diverted total donation to the tune of Rs. 2,56,00,000/-, as against the total reserved funds of the market committee as on 30/9/1997 in the sum of Rs. 16,65,97,488-96, out of which 20% amount was required to be diverted in the Unava A.P.M.C. leaving the balance reserved fund of Rs. 13,32,77,990-40. As against that, the previous market committee diverted only Rs.81,95,000/- over a period of eight years, whereas the new market committee has donated Rs.1,61,00,000/- to the State Government in Gokul Gram Scheme, Rs.31,00,000/- to the Education Institutions, Rs. 5,00,000/- to Health Centres, Rs. 28,00,000/- to Gokul

Gram Scheme and Rs. 31,00,000/- to the Chief Minister's Relief Fund. It has, therefore, been asserted that the present management has diverted the funds disproportionately against the interest of the market committee. The interim relief was refused in the main matter inter-alia on the ground that the old market committee diverted funds of Rs.50,00,000/to the Education Institutions within the market area and yet the said amount was deposited with interest with the market committee by those Trusts after the report of the opponent no.3 (Deputy Director of Agricultural Market and Rural Finance and District Registrar, Cooperative Societies. It has been the case of the applicant that the State Government issued resolution for donation for the Charitable purposes permitting donation not beyond 20% of the market fund, whereas the new market committee exceeded the limit by giving total donation to the extent of Rs. 3,37,95,000/- as against maximum limits of such donations in the sum of Rs. 2,50,00,000/-.

6. As the civil application was placed for hearing, by consent the main matter was taken up for final hearing and disposal.

7. The case of the petitioners as aforesaid has been resisted in the form of affidavit in reply filed in the main matter on 23/4/1998 by the Joint Secretary of the State Government and affidavit in reply dated 14/9/1998 filed by the Secretary of the newly added respondent no.4 (new market committee). There is also an affidavit in the civil application dated 31/8/1998 filed by the Secretary of the market committee.

8. While denying the allegations made by the petitioners it has been asserted that the petition is not maintainable under Article 226 of the Constitution of India, that the petitioners were nominated by the State Government on the Agricultural Produce Market Committee, Unjha, District Mehsana vide order dated 31/1/1997 u/S. 54 of the Markets Act by the previous Government and that Section 54 does not provide for any qualification except that a nominated member may as far as practicable be a member of the dissolved market committee and the maximum period for which such member can hold office is 2 years. In Dattaji Chirandas and ors. v/s. State of Gujarat Special Civil Application No. 1708 of 1998 (Coram : M.S. Shah, J.), it has been held that even though, in the notification it is stated that the members of two market committees would hold office for a period of two years, the Government was empowered to nominate other members. The petitioners were not the elected members,

but they were nominated members u/S. 54 of the Markets Act and as such the Government could replace them by other members. In respect of the same market committee a petition was filed by one Naranbhai Lallubhai Patel. That was S.C.A. No. 8953 of 1997 and this Court (Coram : K. Sreedharan, C.J. as he then was and A.R. Dave, J.) passed order directing the State Government to take action as per the provisions of the Act. Under all these circumstances, the State Government decided to replace the earlier nominated members by the present members pursuant to bonafide steps taken by the State Government in the interest of Agricultural Produce Market Committee. It has been asserted that the decision of the State Government is not tainted with political influence, but has been in accordance with law as per the directions of this Court. In S.C.A. No. 3154 of 1998 the contention was that there was likely to be merger of Unjha and Unava Market Committees. Hence, the order passed in S.C.A. No. 3154 of 1998 was referable to the said contention. In the second affidavit in the main petition as referred to hereinabove it has been contended that the petitioners having not joined the nominated members pursuant to the impugned notification of the State Government Annexure-D, the petition suffers from the vice of non-joinder of proper and necessary parties. It has been asserted that the petitioners nos. 2 and 3 and other persons formed as many as six trusts after they became Chairman and Vice Chairman of the A.P.M.C. Unjha. The said trusts in the name of Vivekanand Gram Vikas Trust and others were registered on or around 4/7/1997 and the petitioners nos. 2 and 3 and persons of their close confidence were made trustees thereof. The six trusts were in the names and style of -

i. Vivekanand Gram Vikas Trust of Brahmanwada
ii. Vivekanand Gram Vikas Trust of Maktupur
iii. Vivekanand Gram Vikas Trust of Ranchhodpura
iv. Vivekanand Gram Vikas Trust of Kahoda
v. Vivekanand Gram Vikas Trust of Karli
vi. Vivekanand Gram Vikas Trust of Unjha.

In the background of the formation of the trusts the agenda of the market committee was circulated on 20/9/1997 for considering applications regarding seeking of donations by these trusts. On 29/9/1997 the meeting of the market committee was convened and the petitioners nos. 2 and 3 by majority vote with the opposition of one Mr. Naranbhai Lallubhai Patel, present Chairman of the market committee, got the resolutions passed under the terms of which total amount of Rs. 1,09,05,000/- was resolved to be transferred in favour of these trusts and

out of that amount, Rs. 49,05,000/- came to be disbursed and transferred with the result that the aforesaid Naranbhai Lallubhai Patel had to file S.C.A. No. 8953 of 1997 in which order dated 13/2/1998 was passed by the Division Bench of this Court as aforesaid. The order has been reproduced in the affidavit in reply and the same reads as under :-

"Heard Counsel representing the parties in these proceedings. Learned Government Pleader was also heard. We direct 2nd respondent, the Director of Agricultural Marketing and Rural Finance to hold a detailed enquiry into the circumstances under which the third respondent, Agricultural Produce Market Committee, Unjha, disbursed Rs. 49,00,000/- odd in favour of various Trusts. The amount disbursed by the Agricultural Produce Market Committee as per its own affidavit is as follows :-

"..... remaining amount of Rs.49,05,000/was to be disbursed to the six respondent trusts for charitable purposes, and accordingly, Rs. 9,85,000/was allotted to Vivekanand Gram Vikas Trust, Brahmanvada, an amount of Rs.9,80,000/- was allotted to Vivekanand Gram Vikas Trust, Maktupur, an amount of Rs. 9,80,000/- to Vivekanand Gram Vikas Trust, Ranchhodpura, an amount of Rs.9,80,000/- was awarded to Vivekanand Gram Vikas Trust, Kahoda and an amount of Rs. 9,80,000/- was allotted to Vivekanand Gram Vikas Trust at Karli. ...."

According to the said affidavit, the total amount of Rs. 49,05,000/-, which is donated to the six Trusts is to be utilized for construction of rooms of primary schools. Enquiry to be conducted by the 2nd respondent must cover the aspect as to the circumstances under which the amount has been transferred, the necessity for such transfer and whether the provisions of the

Gujarat Agricultural Produce Market Act, 1963 and the Rules framed thereunder, allow such transfer of Market Committee's funds to private trusts. Detailed enquiry into the entire transaction must be held by the 2nd respondent in accordance with the said Act and the Rules and the detailed

report thereon should be made available to this Court. This must be done as expeditiously as possible, at any rate, on or before 6/3/1998. If the report is not made available to this Court on 6/3/1998, 2nd respondent must personally be present before this Court to explain the reason for the delay.

Adjourned to 6/3/1998."

9. It has been asserted that in view of the directions given by this Court a detailed inquiry was made and report of such inquiry was submitted to the Court dealing with the aforesaid petition (S.C.A. No. 8953 of 1997). It was found in the inquiry that the market committee Unjha had transferred the amount to the respective trusts named above and the funds were accordingly misused. Upon hearing of the writ petition the Division Bench by its order dated 6/3/1998 gave following directions :-

"6. On the basis of the report now made available to us by the Director, Agricultural Marketing and Rural Finance, it is seen that the third respondent Market Committee was giving largesses to various trusts with scant respect to the provisions contained in the Agricultural Produce Market Act and the Rules framed thereunder. So, prima facie this is a fit case where Government are to take action under the Act with special reference to the provisions contained in Section 46 of the Act. We direct the Government, first respondent, to apply its mind to the entire affairs of the third respondent Market Committee and to take appropriate action in accordance with law as expeditiously as possible.

7. Special Civil Application is disposed of with the above directions. Notice is discharged. We direct the parties to suffer their costs. The report submitted by the second respondent, Director of Agricultural Marketing and Rural Finance, will form a part of the record of this case."

10. It has also been asserted that the petitioner no. 2 had gone to foreign countries for a period of almost one month from 4/3/1998 to 1/4/1998 and approximately a

sum of Rs. 3,70200/- came to be spent. Out of this amount 75% amount was to be borne by the market committee and remaining 25% amount was to be borne by the petitioner no.2. The petitioner no.2 moved in different cities as particularised in para. 9 of the affidavit in reply. Over and above the aforesaid amount, a sum of Rs. 3266/- was also spent by the market committee towards the petitioner no.2's foreign trip. These facts have been stated for saying that the petitioner no. 2's visit to foreign country was totally uncalled for and against the provisions of the Markets Act and Rules. It has then been asserted that on account of high handed and arbitrary actions of the petitioners nos. 2 and 3 some of the traders at large of the market committee at Unjha had suffered considerably. One person had resolved to go on fast unto death. The market yard also remained closed for a day or two. Thus, the petitioners nos. 2 and 3 misused their office and improperly and inefficiently handled the affairs of the market committee for their personal interest. In view of all these facts and more particularly in view of the directions given by the Division Bench of this Court in S.C.A. No. 8953 of 1997 the State Government was required to recall the nominations and exercise its power to replace the nominees. A reference has also been made to a decision rendered by this Court (Coram : M.S. Shah, J.) in S.C.A. Nos. 1708, 1709, 1711 and 1712 of 1998 and other allied matters where questions regarding tenure of Chairmen of various statutory corporations having been terminated or likely to be terminated were required to be considered. This Court by its judgment and order dated 7/4/1998 dismissed the petitions holding that the tenure was at the pleasure of the Government. In the Letters Patent Appeals preferred against the said decisions no interim orders have been passed as per the information of the 4th respondent.

11. It has finally been asserted that by virtue of Article 12 of the Constitution of India the Agricultural Produce Market Committee is a "State" and the State Government has complete control regarding the entire functioning of the market committee. Thus, it would be within the policy of the State Government if the power regarding nominees of the market committee has been exercised as aforesaid.

12. With regard to allegations made against Mr.Naranbhai Lallubhai Patel, who is the M.L.A. it has been asserted that he is not joined as a party to this petition and in view of the decision of this Court as reported in 1998 (2) G.L.R. 1604 the allegations of

malafides cannot be accepted as the person against whom they are alleged is not joined as a party. The interim relief passed in this matter came to be challenged by way of L.P.A. No. 611 of 1998 and the Division Bench of this Court (Coram : C.K. Thakkar and A.L. Dave, JJ.) by order dated 30/4/1998 dismissed the said L.P.A. This would establish that even at the interim stage the petitioners had no prima-facie case and the balance of convenience was also not in favour of the petitioners.

13. The respondents have, therefore, claimed the present petition to be dismissed.

14. In so far as the aforesaid civil application is concerned, while denying the allegations in the said civil application, it has been asserted on behalf of the respondents that the prayers in the civil application have no direct or indirect connection with the issues involved in the main petition and, therefore, the civil application is not maintainable and that the opponent no.4 market committee has acted in accordance with the provisions of the Markets Act and Rules framed thereunder and has not committed any illegality or has not violated any directions. It has been asserted that the action of giving the funds for particular purposes to the State Government is in accordance with the provisions of sections 32 and 33 of the Markets Act and there has been no violation of the said provisions by the market committee. It has been asserted that the action of the funds having been donated to the State Government for Gokul Village Scheme, Education Institutions, Health Centres and to the Chief Minister's Relief Fund in view of the extra-ordinary cyclonic position in Gandhidham and Kandla was approved by the Director of Agricultural Marketing and Rural Finance. Such approvals are placed on record at Annexure-I to the affidavit in reply to the civil application. It has, however, been asserted that no such amount of Rs.28,00,000/- has been transferred to Gokul Gram Scheme and that no fund has been donated contrary to the provisions of law and rules. The civil application has been sought to be dismissed accordingly.]

15. I have heard Mr. S.K. Jhaveri, learned advocate appearing for the petitioners, Mr. J.M. Thakore, learned Advocate General with Mr. P.G. Desai, Ld. Govt. Pleader for the respondent no. 1 - State and Mr. M.D. Pandya, learned advocate for the rest of the respondents. Mr. Jhaveri has submitted that following points arise for consideration in this petition :-

(I) Whether on constituting two market committees by

the order dated 31/1/1997, the power, if any, conferred upon the State Government under Section 54 is exhausted?

(II) Whether the State Government has power to remove the members of the market committee constituted as per Annexure A u/S. 54 before the completion of the term for which they were appointed?

(III) Assuming such power, whether the members are entitled to opportunity of being heard before exercising such power?

i.e.

Whether the State Government is obliged to issue show cause notice why they should not be removed?

(IV) Whether proper course for the State Government was to proceed against the Market committee as contemplated under section 46?

(V) Whether impugned orders at Annexures D & E are liable to be set aside as arbitrary and contrary to democratic principles enshrined in the constitution in respect of Local authorities?

(VI) Assuming that powers under section 54 can be exercised again is it not incumbent upon the State Government to nominate as members, so far as practicable, the persons who were members of the dissolved market committee?

16. With a view to answer the aforesaid points Mr. Jhaveri referred to the interim order passed by this Court in the matter of Unava Market Committee. In that case also the Government opted to exercise powers u/S. 54 of the Markets Act, more particularly sec. 54 (2) and (3) thereof. The reason for such exercise of powers was that after the bifurcation of the erstwhile Unjha A.P.M.C. into Unjha A.P.M.C. and Unava A.P.M.C. the members of the committee appointed by order dated 31/1/1997 did not take any action so as to put the Unava A.P.M.C. in working. They did not take steps for activising the market yard and had not acted in furtherance of the notification issued by the State Government. On account of such inaction the State Government decided to nominate other members in place of the members nominated by earlier Government. In that respect S.C.A. No. 3367 of 1998 has been filed by the previsouly nominated members representing the Unava

A.P.M.C. This Court (D.C. Srivasta, J.) by order of May 1998 while observing that the questions involved in the petition would require consideration at the time of final hearing, more particularly whether sec. 54(2) and (3) of the Markets Act disclose 'pleasure' doctrine or not and whether under the scheme of the Markets Act the State Government can exercise power as per doctrine of "pleasure" and in exercise of such power the State Government can remove the nominated members before completion of the term for which they were appointed and that even if such doctrine of "pleasure" is to be invoked in exercise of the said provisions of the Markets Act, whether the petitioners were entitled to opportunity of hearing and whether the State Government would be obliged to issue show cause notice to them why they should not be removed. It was also required to be considered whether the petitioners could be removed even if the petitioners did not act in accordance with the scheme of the Act and with the policy of the Government when u/S. 46 of the Markets Act the State Government could supersede the market committee. In fact these are also the submissions of Mr. Jhaveri at the final hearing of this petition. The Court while dealing with the interim relief in that case prima facie observed that the doctrine of pleasure is apparently missing in the statute and, therefore, the petitioners in that petition were entitled to interim relief.

As against that, the learned Advocate General has submitted that upon a plain reading of sec. 54 (3) of the Markets Act and upon visualising the scheme unde sec. 54 of the Markets Act, the Government has been invested with powers akin to 'pleasure doctrine' and it cannot be said that pleasure doctrine is missing in the said provision of the Markets Act. On both the sides number of decisions have been canvassed and in my opinion it has first to be ascertained whether the provision contained in sec. 54, more particularly in sec. 54 (3) of the Markets Act, discloses pleasure doctrine.

17. At the very commencement of consideration of the question whether the aforesaid provision discloses 'pleasure' doctrine, Mr. S.K. Jhaveri, learned advocate for the petitioners might pose a question : Are we still in medieval times when it was the pleasure of King/Queen that prevailed? In answer the learned Advocate General and the advocates on the other side might pose a question : Is it not that the pleasure of a King/Queen in the medieval times has transformed into pleasure of people in the sense that it would be the people's Government that rules?

18. For the purpose of appreciating the submissions made with regard to sec. 54, more particularly sec. 54 (3) of the Markets Act in the context of such a doctrine, investing such power with the State Government regarding nominating members of a market committee, it would be appropriate to reproduce the said provision of the Markets Act. Section 54 as a whole would read as under :-

"54. Power of State Government to dissolve and constitute market committee on alteration of limits of market.- (1) When during the term of a market committee the limits of the market area for which it is established are altered or the market area is divided into two or more separate market areas, the State Government may by order in writing dissolve the market committee and direct that a market committee be constituted for each market area as formed on account of such alteration. The members of the market committee so dissolved shall vacate their office from the date specified in the order.

(2) A new market committee constituted under the provisions of sub-section (1) shall consist of members nominated by the State Government and its Chairman and Vice Chairman shall be elected in the manner provided in this Act. The member shall, so far as in the opinion of the State Government may be practicable, be persons who were members of the dissolved market committee.

(3) The members of such new market committee shall hold office for such period not exceeding two years as the State Government shall by order in writing specify.

(4) On the expiry of the period of office of the members of a market committee under sub-section (3), the market committee shall be reconstituted in the manner provided in section 11."

In order to enable this Court for interpreting the aforesaid provisions for the purpose of resolving the above questions, number of decisions have been referred to by both the sides and they might at once be dealt with: The learned Advocate General has submitted that there is nothing in the Markets Act which would restrict

either expressly or impliedly the power which has been conferred upon the Government under sub-section (3) of the aforesaid provision. He has also submitted that the provision does not speak about a fixed period so as to circumscribe or limit the power of the State Government to nominate members of a new market committee. The words used are "shall hold office for such period not exceeding two years as the State Government shall by order in writing specify". He has further submitted that these words do not restrict the power of the State Government in any manner except nominating the members of a new market committee upon alteration of limits of market for a period which has not to exceed two years. According to his submission, thus within the maximum limit of two years it is within the authority of the State Government to nominate and/or replace nominated members upon the occasion arising for that purpose. He has submitted that no part of the aforesaid provision prescribes any disqualification or stigma upon the members who are nominated at the first instance and who are sought to be replaced by other nominees. Taking through the provisions of the Markets Act he has submitted that there is no other provision which would speak about disqualification and/or disability which can be presented for the purpose of removing the nominees first appointed u/S. 54 of the Markets Act and, therefore, whenever any occasion arises for the State Government to replace the nominees nominated at first u/S. 54 of the Markets Act, no stigma would attach to the nominees sought to be removed by way of replacement. According to his submission in fact the appointment of new nominees for the existing nominees within the maximum time limit of two years would in substance amount to replacement of the nominees and such replacement is clearly within the power of the State Government, which is popularly known as "pleasure". For substantiating his submissions learned Advocate General has also made reference to following provisions of the Bombay General Clauses Act :-

"14. Powers conferred on any Government to be exercisable from time to time.- (1) Where, by any Bombay Act [or Gujarat Act] made after the commencement of this Act, power is conferred on [any Government], then that power may be exercised from time to time as occasion requires.

"16. Power to appoint to include power to suspend or dismiss.- Where by any Bombay Act [or Gujarat Act] a power to make any appointment is

conferred, then, unless a different intention appears, the authority having powers to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power."

In the background of the above submissions following decisions have been relied upon :-

19. Taking first the decisions of Hon'ble Supreme Court, reference has first been made to the decisions in the case of Lekhraj v. Dy. Custodian, Bombay, reported in AIR 1966 SC 334 and in Bool Chand v. Kurukshetra University reported in AIR 1968 SC 292. In the first case the relevant question was with regard to whether the appellant was lawfully removed from the management of the business and the submission on behalf of the appellant was that u/S. 10 (2)(b) of the Administration of Evacuee Property Act (1950) the Custodian had the power to appoint Manager for the Evacuee Property for carrying on any business for the evacuee and there was no power conferred by the Act upon the Custodian to remove the Manager so appointed. The Apex Court held that the power of appointment conferred upon the Custodian u/S. 10(2)(b) of the 1950 Act confers by implication upon the Custodian the power to suspend or dismiss any person appointed as Manager. It has been observed that the management of a person with regard to the business concerns can lawfully be terminated by the Deputy Custodian by virtue of the aforesaid provision of 1950 Act read with sec. 16 of the General Clauses Act. The principle underlying the section is that the power to terminate is necessary adjunct of the power of appointment and is exercised as an incident to or consequence of that power. In the second case the State of Madhya Pradesh held an inquiry against the appellant Dr. Bool Chand, a member of the Indian Administrative Service, on charges of "gross misconduct and indiscipline". The inquiry officer held that in recording certain remarks "regarding association of the Commissioner of Bhopal with one B.L. Gupta a pleader of Zirapur", the appellant was "actuated by malice" and his conduct offended against official propriety, decorum and discipline" and that the appellant had without permission removed a safe from the Rajgarh Treasury. The President of India served notice upon the appellant requiring him to show cause against the order of compulsory retirement proposed to be passed against him. The President also consulted the Union Public Service Commission, who was of the view that in view of their findings and conclusions

they would advise the President for the proposed action against the appellant. The appellant was accordingly directed by the President to compulsorily retire from the Indian Administrative Service with immediate effect. The appellant was thereafter appointed as Professor and Head of the Department of Political Science in Punjab University and then Vice Chancellor of the Kurukshetra University under the order of the Chancellor of the University. Ultimately, upon the Chancellor vacating the office, Sardar Ujjal Singh, Governor of Punjab held office of Chancellor. On March 31, 1966 the Chancellor Sardar Ujjal Singh ordered that the appellant be suspended from the office of the Vice Chancellor and by another order the Chancellor issued notice requiring the appellant to show cause why his services as Vice Chancellor of the Kurukshetra University be not terminated. In the back ground of these facts the appellant filed a writ petition for quashing the order and notice dated 31/3/1966. On May 8, 1966 the Chancellor passed an order in exercise of the power under sub-clause (vi) of Clause 4 of Schedule-I to the Kurukshetra University Act, 1956 read with sec. 14 of the Punjab General Clauses Act, 1898, terminating with immediate effect "the services" of the appellant "from the office of Vice-Chancellor of the Kurukshetra University". The petition was, therefore, directed by the appellant seeking relief against the last mentioned order. The High Court of Punjab rejected the petition and against that order the appellant was before the Hon'ble Supreme Court. It was contended that the Chancellor had no power to terminate the tenure of office of a Vice Chancellor. For that purpose the provisions of sections 4, 7, 8, 14 (1) and 21 of the Kurukshetra University Act 12 of 1956 read with the statutes in Schedule-I were examined. Upon a review of the aforesaid provisions it has been noticed that the Vice Chancellor is an officer of the University invested with executive powers set out in the Statutes and his appointment is to be made ordinarily for a period of three years and on terms and conditions laid down by the Chancellor. However, there is no express provision dealing with the termination of the tenure of office of the Vice Chancellor. The Apex Court has expressed that it has been unable to accept the plea that the tenure of office of the Vice Chancellor under the Act cannot be determined before the expiry of the period for which he is appointed, holding that a power to appoint ordinarily implied a power to determine the employment. Reference in that regard has been made to an earlier decision in the case of S.R. Tiwari v/s. District Board, Agra reported in AIR 1964 SC 1680. The quotation which has

been reproduced from the decision would read :

"Power to appoint ordinarily carries with it the power to determine appointment, and a power to terminate may in the absence of restrictions express or implied be exercised, subject to the conditions prescribed in that behalf by the authority competent to appoint."

Reference in this regard has been made to sec. 14 of the Punjab General Clauses Act 1 of 1898. It has been argued against this propositition that sec. 14 of the Punjab General Clauses Act 1 of 1898 would not have any application for the interpretation of the aforesaid provisions of the Kurukshetra University Act and the statutes [clause 4 (vi) and (vii)] prescribing that the appointment of a Vice Chancellor is ordinarily to be for a period of three years and, therefore, such a prescription in the provision of clause 4(vii) discloses a different intention negativing the applicability of the aforesaid principle as emanating from said section 14 of the General Clauses Act. The Apex Court has negatived this argument saying that clause 4 (vii) of the Statute prescribes that the appointment of a Vice Chancellor shall ordinarily be for a period of three years, but it does not purport to confer upon a person appointed Vice Chancellor an indefeasible right to continue in office for three years; the clause merely places a restriction upon the power of the Chancellor when fixing the tenure of the office of Vice Chancellor.

20. Next decision is in the case of Om Narain Agarwal v/s. Nagar Palika reported in AIR 1993 SC 1440. In that case section 9 proviso 4 of the U.P. Municipalities Act (1916) (added by U.P. Act 19 of 1990), whereby nomination of women members was provided, was under consideration. Dealing with the aforesaid proviso it has been held that such provision would neither offend any Article of the constitution nor would be against public policy or democratic norms enshrined in the Constitution. There is also no question of violation of natural justice in not affording any opporotunity to the nominated members before their removal. The removal of such nominated members under the pleasure doctrine contained therein does not put any stigma on the performance or character of the nominated members. Same is done purely on political considerations. Following observations have been read before this Court :-

"The nominated members of the board fall in a different class and cannot claim equality with the elected members. We are also not impressed

with the argument that there would be a constant fear of removal at the will of the State Government and he is bound to demoralise the nominated members in the discharge of their duties as members in the board. We do not find any justification for drawing such an inference, in as much as, such contingency usually arises only with the change of ruling party in the Government. Even in the case of highest functionary in the Government like the Governors, Ministers, the Attorney General and the Advocate General discharged their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to demoralise or remain under

a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remain in the office."

It might be noted that the aforesaid decision deals with an express pleasure doctrine as can be seen from the proviso which reads as under :-

"Provided also that a member nominated under this section, whether before or after February 15, 1990 shall hold office during the pleasure of the State Government, but not beyond the term of the board."

At the same time the decision explains the nature of the doctrine and the consequences of exercise of powers under such doctrine as can be seen from the aforesaid observations.

It will not be out of place here itself to reproduce the following observations of the Apex Court appearing in para. 8 of N.S. Thread Co. v. James Chandwick & Bros. reported in AIR 1953 SC 357 (at p. 359) :-

"It is a well-known rule of construction that when a power is conferred by a statute that power may be exercised from time to time when occasion arises unless a contrary intention appears."

See also State of Maharashtra v. Narayan reported in AIR 1982 SC 1198 & AIR 1983 SC 46 and State of H.P. v.

Kailash Chand Mahajan reported in AIR 1992 SC 1277 at page 1293.

21. Then there is a decision of the Federal Court in Rayarappan v. Madhavi Amma reported in AIR (37) 1950 Federal Court 140. Dealing with sec. 16 of the General Clauses Act, 1897 it has been observed that the said provision has been enacted so as to avoid superfluity of language in statutes wherever it is possible to do so, and provision has codified the well-understood rule of general law that the power to terminate flows naturally and as a necessary sequence from the power to create.

22. Then there is a reference to two decisions of the Delhi High Court, first one being in the case of Bar Council of Delhi v/s. Bar Council of India reported in AIR 1975 Delhi 200, where section 15 of the Advocates Act, 1961 and section 3 (3) of the said Act were under consideration. The observations appearing in paras. 10, 11 and 12 have been read before this Court. Accordingly a person may come to occupy an office either by appointment or by election. In either case, he may be an employee of a corporation or he may be only the holder of an office of the corporation and not its employee. The essence of the employment is the disciplinary power of the employer over the employee. This disciplinary aspect is not attached to the holder of an office which is not an employment. In such circumstances, the common law relating to the removal of the holder of an office to the effect that the body which has the authority to elect its Chairman has the inherent and implied power to remove the Chairman. The question that was required to be considered was in respect of the office of the Chairman of Bar Council. On consideration of the aforesaid propositions and dealing with the aforesaid provisions of the Advocates Act, the Delhi High Court declared that the Delhi Bar Council was entitled u/S. 15 of the Advocates Act to make a rule to provide for the summoning of a meeting of the said council for the express purpose of moving a motion of no-confidence against the Chairman and for the passage of such a resolution resulting in the removal of the Chairman from office.

The other one is in the case of Ghanshyam Singh v. Union of India reported in AIR 1991 Delhi 59, in respect of which S.L.P. No. 4811 of 1990 came to be filed and dismissed. This is what has been submitted by the learned Advocate General while citing this decision. Head Note B of the citation was read. That was in respect of the provision contained in sec. 41 (3) of the Multi-State Cooperative Societies Act (51 of 1984). In

that matter Shri Ghanshyam Singh was nominated as a Director on the Board of Directors of Indian Farmers Fertilizer Cooperative Limited (IFFCO) by the Government of India by letter dated 30/3/1988. The nomination was made under bye-law no.33 of IFFCO. It was to take effect from 31/3/1988 when the Board was to be reconstituted. The nomination was not for a fixed period but "valid until further orders". In partial modification of the letter dated 30/3/1988, the Government of India by letter dated 19/12/1989 nominated Shri Satbir Singh Kadiyan, Member, Legislative Assembly of the State of Haryana on the said Board of Directors in place of the petitioner. The letter was to take effect immediately and the nomination as in the case of Shri Ghanshyam Singh was "until further orders". The newly nominated Director resumed office with effect from 20/12/1989 vice the petitioner. The two orders of nomination and resumption of office by Shri Satbir Singh Kadiyan came to be challenged in the writ petition before the Delhi High Court. The challenge was inter-alia on the ground that sec. 31 (3) of the Multi-State Cooperative Societies Act, 1984 would be ultra vires Articles 14 and 16 of the Constitution of India on the ground that the person nominated by the Central Government or the State Government on the Board of the society would hold office during the pleasure of the respective Government. The learned Additional Solicitor General on behalf of the Union of India refuted the contentions made on behalf of the petitioner submitting that the nomination of the petitioner was till further orders and created no right in as much as it was at the pleasure of the Government and, therefore, the Government had the inherent power to recall or revoke that order at its pleasure. On behalf of the petitioner reference was made to Sukhnandan Thakur v. State of Bihar reported in AIR 1957 Patna 617, S.O. Jaisinghani v. Union of India reported in AIR 1967 SC 1427, O.P. Bhandari v. Indian Tourism Development Corporation Limited, reported in AIR 1987 SC 111 and Sr. Superintendent of Post Office v. Izhar Hussain reported in AIR 1989 SC 262 for the propositions that the nomination of the petitioner was an employment under the Government and that the provision of sec. 41(3) of the Multi-State Cooperative Societies Act cannot co-exist with Articles 14 and 16 of the Constitution and must therefore, die. Following observations of Ramaswamy, J. in S.O. Jaisinghani's case (supra) came to be referred to and quoted :-

> "The absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system

governed by rule of law, discretion, when conferred upon executive authorities, must be continued within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law...."

Dealing with the submissions made on behalf of the rival parties, the Delhi High Court concluded and observed as under :-

"35. We are of the view that the contention of Mr. Thakur that the nomination of the petitioners as Director be construed as an 'employment' under the Government although attractive, is to be rejected. Even if the nomination is to be equated with the word 'appointment', it cannot be held that it was an 'employment' under the Government. The scheme of the Act and the Rules/Bye-laws negatives that contention. The case law cited by Mr. Thakur on this aspect has no application. We agree with the counsel for the respondents that the exercise of power nominating respondent no. 3 in place of the petitioner herein was to be made on subjective satisfaction only. As we have noticed, it is not the case of the petitioner that respondent No. 4 had any personal ill-will or spite against him. The order of 30th March, 1988 whereby the petitioner was appointed and the second order dated the 19th December, 1989 whereby respondent no. 3 was appointed in his place, were passed in exercise of power which is not open to judicial review excepting of course for malafides, which as we have held is absent in this case.

36. Other reasons for coming to this conclusion are as follows :

1) The initial nomination of the petitioner herein and for that matter nomination of any official or non-official and the Board of Directors was at the will of the Government. The

Government have inherent power to revoke the same as per S. 16 of the General Clauses Act. A Division Bench of this Court in Bar Council of

Delhi v. The Bar Council of India, reported in AIR 1975 Delhi at page 200 has held that an elected office which is held at pleasure, the holder can be removed at will without showing any cause unless there is a provision in the rules or bye-laws laying down that he can be removed only for a cause. Setting aside the decision of the Bar Council of India that a rule cannot be made under S. 5 of the Advocates Act for the removal of the Chairman of the Bar Council, it was, inter-alia, held in para. 12 of the reported judgment that :

"The view of the Bar Council of India is on the other hand based on the very silence of the statute on the point. We are of the opinion that such silence indicates that the common law regarding the removal of the holder of an office remains unchanged. The statute does not, therefore, have to say that the Chairman of the State Bar Council would be removable by a resolution of no-confidence. The reason is that such power of removal is inherent in the Bar Council, which elects its Chairman. The power given to the State Bar Council to elect its Chairman is codification of only a part of the common law. Such codification does not change the other part of common law, which implies in the State Bar Council the power to remove the Chairman so elected. Just as rules can be made u/S. 15 to carry out the expressed power of the Bar Council to elect the Chairman it would appear that the rules may also be made to carry out the implied power of the State Bar Council to remove the Chairman. The two powers are inseparable and incommon law. They can be separated only by statutory intervention. So long as this is not done they would remain connected with each other even though only one of the powers, namely, the power of election has been made statutory while the other power, namely, the power of removal has been left to be implied. If such a power

is not implied, the mere codification of the power to elect would result in a change in the common law. There is no warrant for implying such a change. On the contrary, the construction of the statute in the light of the common law implies such a power in the State Bar Council."

We are bound by the principles of law enunciated in the said decision. In our view, in the absence of sub-sec. (3) of S. 41 a nomination till further orders is liable to be revoked u/S. 41 (1) itself. The Government is vested with inherent power to do so (See AIR 1950 PC 140

Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Madhavi Amma and AIR 1977 SC 2257 : (1977 Lab. I.C. 1843), M/s. Heckett Engineering Co. v. Their Workmen.

It has been held by the Supreme Court in Life Insurance Corporation of India v. Escort Ltd., AIR 1986 SC 1370 : (1986 Tax LR 1826) that every share-holder (be it a corporation which is an instrumentality of the State) has the same right as that of the other share holder to move a resolution to remove some Directors and appoint others in their places. It was held that LIC of India cannot be restrained from doing so nor is it bound to disclose the reasons for moving the resolution. It was further held that Art. 14 cannot be construed as a charter for judicial review of State actions "and to call upon the State to account for its actions in its many fold activities by stating reasons for such actions."

2) The argument that the petitioner having been elected as Chairman by the Board of Directors of IFFCO, his term of office at any rate is coterminous with the term of the elected members of the Board and, therefore, he is to continue till 30th March, 1991 as a Chairman, is also to be negatived. Mr. Thakur relies on Bye-law no. 44 A in support of this submission. That bye-law reads as under :

"44A. The term of office of the Chairman and Vice Chairman shall be conterminous with the term of elected members of the

Board. In case of any vacancy within this period, the Board shall fill up the vacancy through re-election for the unexpired term of the Board."

The contention is that even if the petitioner is no longer a Director, he has to continue as a Chairman. This contention is also unacceptable. It is axiomatic that a Chairman has to be a Director. The above bye-law cannot be read out of context. The underlying idea of the above quoted bye-law is that a Director who has been elected as a Chairman, shall remain a Chairman for the term of the elected members of the Board but if he ceases to be one by virtue of bye-law No. 38 or on his resignation as a Director or for any other reason, he cannot be held to be continuing as a Chairman. It is unnecessary to further analyse the contention as we are of the view that the petitioner's nomination as a Director cannot be deemed to be for a fixed period of three years i.e. conterminous with the term of the elected members of the Board, nor can we be asked to restrain the Government from recalling his nomination."

23. The learned Advocate General has also referred to a Queen's Bench decision in Terrell v. Secretary of State for the Colonies 1953 (2) Q.B. 482. This is a clear case of pleasure doctrine in as much as the provision which merited consideration with regard to the tenure of a Judge was contained in the Royal Letters Patent of February 1911, article 14 whereof provided as under :-

"The Governor may, in our name and on our behalf, constitute and appoint all such Judges, Commissioners, Justices of Peace, and other necessary Officers as may be lawfully constituted or appointed by us, all of whom unless otherwise provided by law, shall hold their offices during our pleasure."

Dealing with the circumstances of the case at length Lord Goddard, C.J. held that the office of the Judge concerned could not be said otherwise than during His Majesty's pleasure. What is important to be noticed from this decision is that doctrine of pleasure can be

absolute or restricted as otherwise provided by law or withdrawn as provided by law.

24. Last one on the point is the decision in the case of Harisinh Chavda v. Chimanbhai Patel reported in 1991(1) 32 (1) G.L.R. 667. A learned Single Judge of this Court had an occasion to deal with the provisions contained in sections 4 and 6 of the Gujarat Water Supply and Sewerage Board Act, 1978 (XVIII of 1979). Sections 4 and 6 of the said Act speak about the power of the Government inter-alia in respect of appointment of the Chairman of the Corporation. Accordingly unless appointed Ex-officio, such Chairman will hold office for three years. The proviso to Sec. 6 says that the term of office of the Chairman may be determined earlier by the State Government by notification in the Official Gazette. Although section 4 of the said Act provides that the Board shall consist of following members, namely (a) the Chairman to be appointed by the State Government from among persons appearing to it to be qualified by reason of "wide administrative experience in the managerial capacity" or "capability as a technical expert" for such appointment, it would be noticed that no objective criteria have been laid down so as to decide the facts in an objective manner by Courts or by applying the principles of judicial review in so far as the qualifications noted in the said provisions. In the background of the aforesaid provisions this Court has held that there is no vested right in the Chairman to continue to hold office for the entire period for which he was initially appointed and the Government has power to determine the said appointment even earlier and such determination would not be open to judicial review except in case of malafides. [See the decision of Delhi High Court in Ghanshyamsinh's case (supra) and referred to in para. 12 of the Gujarat decision under consideration]. Learned Advocate General read the observations of this Court appearing at page 674 of the citation and they refer to the aforesaid decision of the Delhi High Court. It might be noted from the observations appearing at paras. 9, 17 and 23 of the citation that persons who hold political office cannot invoke the protection of Articles 14, 16 and 311 of the Constitution of India and they also cannot invoke the writ jurisdiction of this Court. It has been observed that political issues are not justiciable issues and 'the appeal should be to the polls and not to the Courts'. If a democratically elected Government, therefore, feels that for effective implementation of its policies and programmes a change in the personnel is necessary, it could not be accused of any malafides or pursuing an act of vendetta.

25. Mr. Jhaveri dealing with the aforesaid decisions has submitted that the provision of sec. 54 of the Markets Act lays down the contingency for nomination of the members of market committee. Once such contingency arises and nomination is made by the Government, the provision would stand exhausted and the Government will not have any other or further power to discontinue the existing nominees and replace them by other nominees. The contingency for sec. 54 to operate is alteration of limits of market u/S. 52 of the Markets Act. Upon coming into existence of such a contingency the State Government is empowered to constitute a new market committee by nominating its members. He has submitted that by virtue of sub-sec. (2) of sec. 54 the Chairman and Vice Chairman of such newly constituted market committee nominated by the State Government are to be elected in the manner provided in the Markets Act. Besides, the members nominated by the State Government shall so far as in the opinion of the State Government may be practicable, are to be the persons who were the members of the dissolved market committee. It has been submitted that upon a plain reading of the provision contained in sec. 54 (2) of the Markets Act the power of the State Government would not only stand circumscribed in nominating the members of the new market committee, but would also stand exhausted once such nomination is made. However, on a reference to sub-sec. (3) under consideration Mr. Jhaveri has submitted that such provision would be controlled by the first two sub-sections and it cannot be said to be conferring either expressly or impliedly any power in the State Government to replace nominated members within the maximum period of two years. To substantiate these submissions Mr. Jhaveri has relied upon a number of decisions which might be referred to.

26. Reference has first been made to a decision of the Apex Court in the case of Lachmi Narain v/s. Union of India reported in 1976 S.C. 714. In this case by virtue of section 2 of the Union Territories (Laws) Act of 1950 power was conferred upon the State Government to extend by notification in the Official Gazette to any Part C State, or to any part of such State, with such restrictions and modifications as it thinks fit, any enactment which is in force in a Part A State. In exercise of such powers the Central Government issued notification dated 28/4/1951 and extended to the then Part C State of Delhi, the Bengal Finance (Sales-tax) Act, 1941 with modifications. Subsequent modifications in sec. 6(2) of the Bengal Act were challenged as ultra

vires section 2 of the Union Territories (Laws) Act, 1950. Considering the nature of the power given by sec. 2 of the Union Territories (Laws) Act, 1950 the Apex Court held that the power would stand exhausted once it would be exercised. The observations appearing at para. 59 were read and they might be reproduced :-

> "59. The power given by S. 2 exhausts itself on extension of the enactment; it cannot be exercised repeatedly or subsequently to such extension. It can be exercised only once, simultaenously with the extension of the enactment. This is one dimension of the statutory limits which circumscribe the power. The second is that the power cannot be used for a purpose other than that of extension. In the exercise of this power, only such "restrictions and modifications" can be validly engrafted in the enactment sought to be extended, which are necessary to bring it into operation and effect in the Union Territory. "Modifications" which are not necessary for, or ancillary and subservient to the purpose of extension, are not permissible. And, only such "modifications" can be legitimately necessary for such purpose as are required to adjust, adapt and make the enactment suitable to the peculiar local conditions of the Union Territory for carrying it into operation and effect. In the context of the section, the words "restrictions and modifications" do not cover such alterations as involve a change in any essential feature, of the enactment or the legislative policy built into it. This is the third dimension of the limits that circumscribe the power."

Learned Advocate General has tried to distinguish this decision by referring to the language of the provision under consideration by the Apex Court and the language of the provision which would be required to be considered in this case. The three dimensions which are noticed by the Apex Court while considering the scope and ambit of sec. 2 of the Union Territories (Laws) Act, 1950 clearly distinguish the nature and content of the provision of sec. 54, more particularly sec. 54 (3) of the Markets Act.

27. Next is the decision in the case of Nasiruddin v. S.T.A. Tribunal reported in AIR 1976 S.C. 331 where powers of the Chief Justice of Allahabad High Court vis-a-vis the provisions of the United Provinces High

Courts (Amalgamation) Order, 1948 were under consideration. Under the said order the new High Court and the Judges and the Division Bench thereof are to sit in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces appoint. Proviso to para. 14 of the aforesaid Order recites that the areas in Oudh could not be increased or decreased by the Chief Justice from time to time. Reading paras. 14, 15 and 35 to 37 of the citation learned Advocate General has submitted, and in my opinion rightly, that this decision throws no light on the question under consideration.

28. The decision in Gurcharan Singh v. V.K. Kaushal reported in AIR 1980 SC 1866, referred to by Mr. Jhaveri, learned advocate for the petitioner, deals with the provisions of East Punjab Urban Rent Restriction Act (3 of 1949). Section 13 (2) (ii) (a) was under consideration. A tenant governed by the aforesaid Rent Restriction Act would fall within the mischief of this provision only if he has effected the transfer or sub-letting after the commencement of the said Act, which commenced to operate in the Ambala Cantonment on 21/11/1969. The sub-letting in that case came to be effected in 1967. However, the Cantonments (Extension of Rent Control Laws) Act, 1957 was amended by Act No. XXII of 1972. Upon amendment, section 1 (2) of the principal Act declared that the principal Act would be deemed to have come into force on 26/1/1950. The words "on the date of Notification" were omitted to Section 3 (1) of the principal Act, and were deemed always to have been omitted, so that under Section 3 the Central Government must be deemed to have been empowered always to extend to a contonment any enactment relating to the control of rent and regulation of house accommodation in force in the State even as it stood before the date of the Notification. Subject to the proviso, the Central Government now enjoyed power to extend an enactment from a date earlier than the date of the notification or from a future date. Subsequently, the Central Government issued Notification No. SRO-55, dated 24/1/1974 superseding the earlier Notification No. SRO-7, dated 21/11/1969 and extending the East Punjab Urban Rent Restriction Act afresh to cantonments in the States of Haryana and Punjab. Section 1 (3) of that Act was modified to read that, except for section 19, it would be deemed to have come into force on 26/1/1950. The result was that the East Punjab Urban Rent Restriction Act would be deemed to have come into force in the Ambala Cantonment on 26/1/1950. Hence, the sub-letting effected

in 1967, must plainly be regarded as having been made after the commencement of that Act. In issuing the Notification dated 24/1/1974 and thereby extending the East Punjab Urban Rent Restriction Act to the Ambala Cantonment retrospectively with effect from 26/1/1950, the Central Government exercised a power not available to it when it issued the Notification dated 21/11/1969. In respect of such exercise of power in the background of the notification dated 21/11/1969, the Apex Court observed that the power of extension stood exhausted and could not be availed of again and, therefore, the notification dated 24/1/1974 was without statutory sanction and invalid. The provision of sec. 3 (1) of the 1957 Act empowered the Central Government to extend, by notification, to any cantonment with such restrictions and modifications as it throught fit the Act relating to the control of rent and regulation of house accommodation which was in force on the date of the notification in the State in which the Cantonment was situated. Upon amendment of 1957 Act by Act No. XXII of 1972 sec. 1 (2) of the principal Act declared that the principal Act would be deemed to have come into force on 26/1/1950. The words "on the date of notification" were omitted in section 3(1) and were deemed to have always been omitted, so that under sec. 3 the Central Government must be deemed to have been empowered always to extend to a cantonment any enactment relating to the control of rent and regulation of house accommodation in force in the State even as it stood before the date of the notification. This amendment was made in order to accord with the further amendment made by inserting sub-sec. (3) in Sec. 3 of the principal Act, which provided that where an enactment in force in any State relating to the control of rent and regulation of house accommodation was extended to a cantonment from a date earlier than the date of such extension was made, such eanctment, as in force on such earlier date, would apply to such cantonment. Section 3 (2) of the principal Act i.e. 1957 Act has been quoted and accordingly reads :-

"2. The extension of any enactment under sub-section (1) may be made from such earlier or future date as the Central Government may think fit :

Provided that no such extension shall be made from a date earlier than -

(a) the commencement of such enactment, or

(b) the establishment of the cantonment or

(c) the commencement of this Act, whichever is later".

Following view was expressed in para. 12 of the citation:-

"12. We are of the view that in issuing the Notification dated 24th January, 1974, and thereby extending the East Punjab Urban Rent Restriction Act to Ambala cantonment retrospectively with effect from 26th January, 1950, the Central Government exercised a power not available to it when it issued the Notification dated 21st November, 1969. The contention, that the issue of the Notification of 24th January, 1974, amounted to a further exercise of power conferred by Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957, under which the earlier Notification was issued is without force and must be rejected."

It might be noted from the aforesaid decision that a power conferred by the statute is distinguished by the character and content of its essential components. One or material components characterising the power cannot be identified with the material components of its nature; they are two different and distinct powers. It has been submitted in reply that under the aforesaid facts relating to the particular provisions of the principal Act and the Amending Act the proposition with regard to exhaustion of power might hold good but can hardly have application to the provision in hand. On comparison of the provisions under consideration by the Supreme Court in Gurcharan Singh's case (supra) and the provision of sec. 54 of the Markets Act, it would clearly appear that there is a vital difference in the nature and content of the respective provisions.

29. Mr. Jhaveri, then, has referred to a decision in the case of Ramesh Birch v. Union of India reported in AIR 1990 SC 560. By notification dated 15/12/1986 issued by the Central Government u/S. 87 of the Punjab Reorganisation Act (Act No. 31 of 1966) the provisions of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, as it was in force in the State of Punjab at the date of the notification and subject to the modifications mentioned in the said notification were extended to the Union Territory of Chandigarh. The said notification of 1986 was subjected to challenge inter-alia mainly on the ground of excessive delegation and thereby abdication of legislative function of the Parliament. There is a detailed discussion of the concept of delegated legislation in paras. 13, 14, 15,

16, 17 and 18 of the citation. In my opinion, learned Advocate General has rightly submitted that this decision would hardly have any relevance to the questions which are required to be dealt with in this petition. At this particular stage it must be noted that the vires of sec. 54, more particularly sec. 54 (3) of the Markets Act have not been under challenge and, therefore, no elaborate consideration of Ramesh Birch's case (supra) is called for. The decision in State of H.P. v. Kailash Chand Mahajan reported in AIR 1992 SC 1277 will not have any application to the question under consideration although if necessary it might be dealt with in answer to the vice of non-maintainability of the petition on account of non-joinder of necessary parties canvassed by learned advocate Mr. M.D. Pandya.

30. Referring to Om Narain Agarwal v. Nagar Palika, Shahjahanpur reported in AIR 1993 SC 1440 Mr. Jhaveri has submitted that there is an express provision with regard to applicability of pleasure doctrine that was under consideration by the Supreme Court. However, it has not been the submission of Mr.Jhaveri that pleasure doctrine can never be implied in the provision. In fact in the absence of any contrary provision in the Markets Act the provisions of sections 14 and 16 of the Bombay General Clauses Act as have been reproduced hereinabove have to be applied while interpreting sec. 54 of the Markets Act, and in my opinion, such a situation would bring within sight 'pleasure doctrine'.

31. In Jehangir v. Corporation, Nagpur reported in (1960) 62 B.L.R. 450 the Division Bench at Nagpur was considering the provisions of sec, 9(1) (d)(vi), 15, 16, 18, 19, 21 (3) and (5) of the City of Nagpur Corporation Act (II of 1950). While dealing with the provisions contained in sec. 15 of the Central Provinces and Berar General Clauses Act, 1914 in the context of the aforesaid express provisions, more particularly the provisions of sections 15, 16, 18, 19 and 21 the Bench held that there was no power with the Mills to recall a person nominated as a councillor by the Mills and that such a nominated councillor would continue to remain in office for a period of five years unless he would incur a disqualification under sections 18, 19 and 21 of the Act (City of Nagpur Corporation Act). It is in the context of the aforesaid provisions that the Bench held that the nominee (the appointee) was no longer subject to the control of the appointers (Mills) and that section 15 of the Local General Clauses Act would not be applicable. The Bench has proceeded on the basis that the City of

Nagpur Corporation Act does make a provision for a removal of a councillor under certain circumstances. When there is a specific provision in the Act for the removal of the councillor, it would not be open to adopt some other procedure to achieve the same object. Hence, it would not be permissible to fall back upon section 15 of the Local General Clauses to call back a councillor on the ground that he had forfeited the confidence of his appointers.

In Hira Devi v. District Board, Shahjahanpur reported in AIR 1952 SC 362 it has been observed that the powers of dismissal and suspension given to the Board which were defined and circumscribed by the provisions of sections 71 and 90 of the U.P. District Boards Act (X of 1922, as amended in 1933) have to be culled out from the express provisions of those sections. It has been further observed that when express powers have been given to the Board under the terms of these sections it would not be legitimate to have resort to general or implied powers under the law of master and servant or under sec. 16 of the U.P. General Clauses Act.

Both the aforesaid decisions have been referred to by Mr. Jhaveri, learned advocate appearing for the petitioners, answering the applicability of the provisions of the Bombay General Clauses Act while interpreting sec. 54 of the Markets Act. Realising that the decisions clearly speak about express provisions regarding the powers of appointment as well as removal considered by the Courts, Mr. Jhaveri made efforts to trace out any such express provision in the Markets Act. He in the process made reference to sec. 14 of the Markets Act. The said provision would read as under :-

"14. Disabilities from continuing member.-
(1) An elected or nominated member shall cease to hold office as such member if -

(i) he ceases to be a member of the electorate by which was elected; or
(ii) he being a member of the class specified in clause (i) of sub-section (1) of section 11 is granted a general licence under this Act; or
(iii) he being a member nominated by a local authority, ceases to be a concillor, or as the case be, a member, of the local authority, or is granted a general licence under this Act.

(2) The question whether any member ceases to hold office under sub-section (1) shall be determined by the Director."

Relying upon the use of the word "nominated" in the opening part of sub-section (1) Mr. Jhaveri has submitted that a nominated member u/S. 54 of the Markets Act can be removed if he incurs a disability as envisaged under the provision. Mr. Jhaveri, therefore, submitted that there being a provision for removal of a nominated member of a market committee pleasure doctrine cannot be implied u/S. 54 (3) of the Markets Act. Mr. Jhaveri, however, conceded that there is no other provision which would speak about removal of a nominated member or cessation of office by nominated member u/S. 54 of the Markets Act. In my opinion, section 14 does not refer to or speak about the members nominated by the Government u/S. 54 of the Markets Act. The word "nominated" appearing in first part of section 14 (1) of the Markets Act clearly refers to and is clearly qualified by clause (iii) dealing with nomination of a member by a local authority. Such nomination is provided under clause (iv) of sec. 11 of the Markets Act. Hence, the aforesaid two decisions even with the assistance of sec. 14 of the Markets Act can hardly merit application while dealing with the provision of sec. 54 of the Markets Act in the context of the applicability of sections 14 and 16 of the Bombay General Clauses Act, as also in the context of applicability of pleasure doctrine as is argued to be implied in the provision of sec. 54 (3) of the Markets Act.

Mr. Jhaveri has referred to a decision of this Court in N.P. Patel v. Deputy Secretary, A.C. & Rural Development Department andothers reported in 1997 (1) G.L.H. 554. A learned Single Judge of this Court dealing with sec. 14 (2) of the Markets Act had an occasion to hold that a show cause notice would be necessary before disqualifying a nominated member u/S. 14 (2) read with Sec. 11 (1)(iii) of the Markets Act. However, as stated above, that would not apply to a nominated member u/S. 54 of the Markets Act.

32. In Kanta Devi and anr. v. State of Rajasthan and ors. reported in AIR 1957 Rajasthan 134, a Division Bench of Rajasthan High Court was concerned with the Rajasthan Town Municipalities Act (23 of 1951). Mr. Jhaveri has referred to this decision in support of his submission that the aforesaid provisions of the Bombay General Clauses Act will not apply once when the power has already been exercised u/S. 54 of the Markets Act,

since the power would stand exhausted upon such first exercise of the power. However, on going through the decision of the Rajasthan High Court it would appear that sec.9 of the Rajasthan Town Municipalities Act (23 of 1951) read with sec. 14 thereof would clearly indicate a different intention negativing either express or implied power of replacing a nominee already appointed. It has been observed by the Bench itself that after the appointment is made and a member is nominated to the Board by the Government u/S. 9, he becomes a "member nominated under this Act" and just as "a member elected under the Act", cannot be stopped from taking his seat after subscribing to the oath, so also "a member nominated under the Act" must have the same rights u/S. 14 of the Act. Thus, the power u/S. 9, once exercised, would get exhausted and this is so because the person nominated immediately on the passing of such order 'a member nominated under this Act' and thereafter he cannot be prevented from taking his seat after subscribing to the oath and can only be removed u/S. 14 of the said Act. Under such circumstances, this decision can hardly be applied while dealing with sec. 54 of the Markets Act in as much as there is no provision which has been pointed out to indicate contrary intention or to indicate an intention negativing applicability of section 14 or 16 of the Bombay General Clauses Act and for that matter applicability of the pleasure doctrine within the compass of the provision of sec. 54 itself.

33. This Court had an occasion to draw the attention of learned Advocate General to a decision of the Hon'ble Supreme Court in Dinesh Prasad Yadav v/s. The State of Bihar and ors. reported in JT 1995 (2) SC 45, where the Supreme Court had an occasion to deal with the expressions "election" and "nomination" and to hold that when a person is nominated by way of selection on the basis of a given criteria from amongst several persons, then in the broader sense he is elected to the office. Learned Advocate General has, however, submitted that this decision would not be applicable even on principle in as much as the expressions "election" and "nomination" have been dealt with by the Supreme Court in the context of the provisions of sec. 14 of the Bihar Cooperative Societies Act, 1935 read with rule 22 (2) coupled with its proviso of Bihar Cooperative Societies Rules, 1959. For that purpose learned Advocate General had read the whole of the decision and having gone through the same, I am of the opinion that the ratio revolving round the consideration of the expressions "election" and "nomination" would not be applicable to the nomination as appearing in sec. 54 of the Markets Act. I, therefore,

do not propose to stretch any further the logic emanating from the decision in Dinesh Prasad's case (supra).

It might also be noted that there is a marked difference between the background in which cooperative legislation and the market legislation came into being. In so far as the Markets Act is concerned in all advanced countries of the world regulation of the market and trade practices was long recognised. In India also Royal Commission on Agriculture reported in 1928 as under (see the notes at page 600 of the Gujarat Local Acts under the preamble to the Markets Act below the caption 'Historical background') :-

"That cultivator suffers from many handicaps : to begin with he is illiterate and in general ignorant of prevailing prices in the market especially in regard to commercial crop. The most hopeful solution of the cultivators' marketing difficulties seems to lie in the improvement of communications and the establishment of regulated markets and we recommend for the consideration of other provinces the establishment of regulated markets on the Berar system as modified by the Bombay Legislation. The establishment of regulated market must form as essential part of any ordered plan of agricultural development in this country."

34. As a matter of fact, it would be useful to refer to what has been said by the learned Single Judge in an unreported decision between Dattaji Chirandas v/s. State of Gujarat rendered on 7/4/1998 (Coram : M.S. Shah, J.) in Special Civil Applications Nos. 1708, 1709, 1711, 1712, 1713, 1716, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1727, 1728, 1775, 1791, 1806, 1807, 1815, 1816, 1949 and 1950 of 1998 (in all 25 matters). This Court had an occasion to deal with submissions with regard to existence or otherwise of pleasure doctrine in the relevant provisions of Gujarat Industrial Development Act, 1962, Gujarat State Warehousing Corporation Act, Gujarat Town Planning and Urban Development Act, 1976, Gujarat Town Planning and Urban Development (Term of Office & Condition of Service of the Members of the Urban Development Authority) Rules, 1977, State Financial Corporations Act, 1951, Gujarat Backward Class Development Corporations Act, Gujarat Municipal Finance Board Act, Bombay Khadi & Village Industries Act, 1960 and Gujarat Slum Area (Improvement, Clearance and Re-Development) Act, 1973. After considering at length

the decision of the Apex Court in the case of Om Narayan Agarwal's case (supra), this Court had an occasion to deal with the problem and observe as under (see para. 35 of the judgment) :-

"35. It is true that in the aforesaid case before the Supreme Court the fourth proviso to Section 9 incorporated the pleasure doctrine in express terms and the learned counsel for the petitioners have, therefore, argued with vehemence that if the statute itself does not provide, in express terms, for pleasure doctrine in the matter of removal of chairman, the doctrine cannot be invoked at all. This Court does not accept the aforesaid contention and holds that a statute can provide for pleasure doctrine for removal of chairman and holders of such high offices by necessary implication, through the following indicia :-

(i) If the appointment to the office of chairman or such other high offices in a public Corporation/Board is to be made by the State Government by nomination and the appointment is left to the subjective satisfaction of the Government, the Court would be inclined to read the pleasure doctrine into the provisions of the statute not merely for the pure appointment, but also for the purpose of removal.

The principle underlying Section 16 of the Bombay General Clauses Act, 1904 and Section 16 of the General Clauses Act, 1897 in pari materia would apply, and, therefore, the power to appoint would include the power to remove, unless a different intention appears in the statute.

(ii) If the statute provides for Governmental control by empowering the Government to give directions or instructions to the concerned Board/Corporation, that would be a strong indication that the holders of the office of Chairman and other high offices were intended to be agents of the Government and, therefore, they can be removed at the pleasure of the Government.

(iii) Absence of a minimum term of office in the statute justifies applicability of the pleasure doctrine in the matter of removal of Chairman and other high public offices. If the statute provides for a minimum term of office, that would militate against applicability of the pleasure doctrine in the matter of removal.

The Court will, therefore, have to apply the aforesaid tests for ascertaining the intention of the Legislature whether or not the statute incorporates the pleasure doctrine for removal of the holders of high offices like Chairmen, Vice-Chairmen and Direcotrs. The rationale for referring to the aforesaid decision of the Apex Court at the outset was only to show that there need not be any judicial resistance to reading into statute pleasure doctrine in the matter of

removal from high offices like Chairmen, Directors, etc. once the first test indicated above is fulfilled. Thereafter the burden of proving that the doctrine would not apply in the facts of a given case would be on the petitioner."

35. Now in the present case appointment of members of the committee u/S. 54 of the Markets Act is by nomination and is on a plain reading of the provision left to the subjective satisfaction of the Government. There is no express or implied contrary intention either in the provision itself or in any other provisions of the Markets Act, which would negative application of principle underlying sec. 14 and/or 16 of the Bombay General Clauses Act. Thus, the power of the nomination as contained in sec. 54, more particularly sec. 54 (3) of the Markets Act, would include the power to remove and/or replace all the nominees or any of the nominees within the compass of maximum period prescribed under the provision. On a bird eye view of the provisions of the Markets Act, as also the historical background leading to the very object of establishment of market committees it would clearly appear that there has been a Governmental control empowering giving of directions or instructions either itself or through the Director. Finally there is an absence of a minimum term of office of nominated members u/S. 54 of the Markets Act. All these tests would apply on a plain reading of the provision contained

in sec. 54, more particularly sec. 54 (3) of the Markets Act.

36. It has, however, been submitted by Mr.Jhaveri that sec. 46 of the Markets Act displays such an intention as would be contrary to the applicability of pleasure doctrine to the power of the State Government u/S. 54 of the Markets Act. Section 46 would read as under :-

"46. Supersession of market committee.- (1) If in the opinion of the State Government a market committee is not competent to perform or persistently makes default in performing the duties imposed on it by or under this Act or abuses its powers the State Government may, by notification in the Official Gazette, supersede such market committee:

Provided that before issuing a notification under this sub-section, the State Government shall give a reasonable opportunity to the market committee for showing cause why it should not be superseded and shall consider the explanation and objections, if any, of the market committee.

(2) Upon the publication of a notification under sub-section (1) superseding a market committee the following consequences shall cause, namely :-

(i) all the mebers as well as the Chairman and Vice-Chairman of the market committee shall as from the date of such publication be deemed to have vacated their respective offices,

(ii) the State Government may at its discretion, either order that a new market committee be constituted under section 11, or make such arrangements for carrying out the functions of the market committee, as it may think fit; and

(iii) all the assets vesting in the market committee shall, subject to all its liabilities, vest in the State Government.

(3) If the State Government makes an order under clause (ii) of sub-section (2), it shall transfer

the assets and liabilities of the market committee as on the date of such transfer, to the new market committee constituted under section 11 or to the person or persons, if any, appointed for carrying out the functions of the market committee, as the case may be.

(4) If the State Government does not make such an order, it shall transfer all the assets of the market committee which remain after the satisfaction of all its liabilities to the State Agricultural Produce Markets Fund constituted under section 34. The Director shall utilise such assets for such object in the areas as he considers to be for the benefit of the agriculturists in that area."

On going through the aforesaid provision it would clearly appear that the said provision cannot be said to be controlling the provisions contained in sec. 54 of the Markets Act. Section 46 clealry appears to operate altogether in a different field. It is true that the Government can exercise power of supersession of the market committee u/S. 46 of the Markets Act, but such a power implying stigma on the members of the market committee being removed by way of supersession cannot be equated with the power to appoint, re-appoint or replace by removal of the members of the committee or any of them as contained in sec. 54 of the Markets Act. The basic difference between the two clearly appears tobe presence or absence of stigma on the out-going members of the market committee when they are sought to be removed/replaced. Thus, power of supersession u/S. 46 of the Markets Act cannot be canvassed as displaying any intention contrary to reading of pleasure doctrine in sec. 54 of the Markets Act with the aid of section 14 and/or 16 of the Bombay General Clauses Act.

37. TO SUMMARISE what is discussed hereinabove, following broad propositions in the context of sec. 54, more particularly sec. 54 (3) of the Markets Act emerge :

I. Section 54 of the Markets Act clearly appears to be a self contained provision which operates upon the markets or market areas undergoing change as contemplated by sec. 52 of the Markets Act.

II. Section 54 does not appear to be controlled, qualified or modified by the provisions of sec.

14 or sec. 46 of the Markets Act.

III. Section 54 of the Markets Act does confer power upon the Government to appoint its nominees and within the outer limit set out in the provision such power can be exercised from time to time since there is no inner limit or minimum limit which would circumscribe and negative such a power.

IV. Accordingly u/S. 54, more particularly sec. 54 (3), of the Markets Act the power of the Government to appoint nominees includes power to remove or replace such nominees by remaining within the outer limit prescribed as aforesaid. Such power will not get exhausted on first nomination and can be exercised from time to time and for that purpose sec. 54 of the Markets Act shall have to be read with sec. 14 and/or sec. 16 of the Bombay General Clauses Act.

V. All the above three indicia proposed by this Court as referred to hereinabove clearly appear to be visible in the provision of sec. 54, more particularly sec. 54 (3) of the Markets Act.

VI. When power u/S. 54 (3) of the Markets Act is exercised again by way of replacement of the nominees or any of them, no stigma attaches on the outgoing nominees although there might be occasion or reason other than political considerations for such replacement.

38. Thus, it has to be found that pleasure doctrine is clearly implied in the provision of section 54, more particularly sec. 54(3) of the Markets Act. First point proposed by Mr. Jhaveri will have to be answered accordingly holding that upon constituting two market committees by order dated 31/1/1997 the power conferred upon the State Government u/S. 54 of the Markets Act would not and did not stand exhausted.

39. Point No. 2 will have also to be answered accordingly holding that the State Government would have power to remove the nominated members of the market committee constituted as per Annexure-A u/S. 54 of the Markets Act before the completion of the term for which they were appointed.

40. As regards point no. 3 it has to be found as a

necessary corollary that the outgoing members/removed members will not be entitled to opportunity of being heard before exercise of such power and will not be entitled to any show cause notice in as much as the action of repeat exercise of power u/s. 54 of the Markets Act within the outer compass will not cast any stigma on the outgoing/removed members.

41. Point no. 4 proposed by Mr. Jhaveri is whether proper course for the State Government was to proceed against the market committee as contemplated us. 46 of the Markets Act. However, in my opinion action us. 46 of the Markets Act would be harsher than the action us. 54 of the Markets Act, in view of the aforesaid conclusion and although the impugned action of the Government us. 54 of the Markets Act will not be justiciable, while answering point no. 4 it has to be found that the Government has followed less invasive power.

42. In so far as point no. 6 is concerned, assuming that powers us. 54 can be exercised again, in my opinion, it follows from the aforesaid discussion that it would not be incumbent upon the State Government to nominate as members as far as practicable the persons who were members of the dissolved market committee, firstly because such an exercise is recommendatory in nature and secondly because that exercise will have to be undergone at the first nomination.

43. Taking now to the remaining point namely, Point No.5 it relates to impugned orders Annexures-D and E. The impugned order Annexure-D is passed by the Government through its Joint Secretary replacing the nominees by removing the previous nominees. In view of the aforesaid discussion, this consequential order would stand and cannot be set aside. The impugned order Annexure-E is also a consequential order resulting from the replacement of the nominees as per the Government notification. This order has been passed to cover the period during which Chairman/Vice Chairman are appointed as contemplated u/S. 54 of the Markets Act. In order that the right procedure is followed by giving required notice the Deputy Director (Agriculture Market) and District Registrar, Mehsana has been appointed to attend to the administration/affairs of the market committee of Unjha under the supervision and superitendence of the Director of Agriculture Markets. In my opinion, this is also a consequential order and the submissions made by Mr. Jhaveri challenging this order would hardly merit any acceptance on account of the conclusion which has been

reached upon interpretation of sec. 54 of the Markets Act.

[44. Mr. M.D. Pandya, learned advocate appearing for the respondent no.4 has submitted that the petition suffers from the vice of non-joinder of necessary parties in as much as the newly appointed nominees have not been individually joined as parties. In my opinion, the submissions made in support of the aforesaid contention by Mr. Pandya cannot be accepted in view of a Constitution Bench decision of the Hon'ble Supreme Court in the case of Daman Singh v/s. State of Punjab reported in AIR 1985 SC 973, where it has been observed that once a person becomes a member of a co-operative society, he loses his individuality qua the society and he has no independent rights except those given to him by the A[A statute and the by-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body. The Apex Court held that the notice to the society would be deemed as notice to all its members. Likewise under the Markets Act a market committee has its independent existence and has been recognised by law as having a personality distinct from the members of the committee. (See sec. 10 of the Markets Act). The Unjha Agricultural Market Committee has been a party respondent and that is how Mr. M.D. Pandya has been before this Court. In that view of the matter, I find no substance in the contention that the petition as it stands suffers from the vice of non-joinder of necessary parties. Hence, on this ground the petition cannot be thrown off. Mr. Pandya's submission is accordingly not accepted.

45. Finally, there are number of facts alleged and counter alleged in the petition as well as in civil application, but in view of the interpretation of sec. 54 of the Markets Act as aforesaid, it would not be necessary to go into the facts which have been disputed by the rival parties as reproduced in the opening part of the judgment.]

In the result, this petition deserves to be dismissed. Rule is accordingly discharged with no order as to cost.

[The Civil Application which has been in substance moved for final disposal of the main matter, will also not survive. The same shall also stand disposed of accordingly with no order as to cost.]

Pronounced on 5th Nov.1998.

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